

REMARKS

Favorable reconsideration and allowance of the present application are respectfully requested in view of the following remarks. Claims 1-3 were pending prior to the Office Action. Claims 4-6 have been added through this Reply. Therefore, claims 1-6 are pending. All claims are independent.

§ 102 REJECTION – BAR

Claims 1-3 stand rejected under 35 USC 102 as allegedly being anticipated by Bar et al. (USP 5,506,946). Applicant respectfully traverses.

For a Section 102 rejection to be proper, the cited reference must teach or suggest each and every claimed element. *See M.P.E.P. 2131; M.P.E.P. 706.02.* Thus, if the cited reference fails to teach or suggest one or more elements, then the rejection is improper and must be withdrawn.

In this instance, Bar fails to teach each and every element recited in the claims. For example, independent claim 1 recites, in part “changing a color-tone of a desired area including the second area into the color-tone of the first area based on cumulative histograms of colors of the first and second areas.” Independent claims 2 and 3 also recite similar features. As will be demonstrated below, Bar cannot be relied upon to teach or suggest at least this feature.

Bar is directed toward data processing of images of color or gray scale images displayed in a computer controlled system. *See column 1, lines 8-11.* Bar discloses selecting a source color and a target color and converting all pixels of the source color into the target color. Bar also discloses building a lookup table of conversions from source colors to the target colors. *See Figures 3A-3F; Figures 4A-4D.*

However, Bar is entirely silent regarding changing color tones based on cumulative histograms of colors. Therefore, claims 1-3 are distinguishable over Bar for at least this reason.

Applicant respectfully requests that the rejection of claims 1-3 based on Bar be withdrawn.

§ 102 REJECTION – SHIAU

Claim 1 stands rejected under 35 USC 102(b) as allegedly being anticipated by Shiau (USP 5,515,172). Applicant respectfully traverses.

Like the Bar reference, Shiau is also directed toward a system and method that converts color data representing a source color to a color data representing a destination color. *See column 5, lines 9-12.* Also like Bar, Shiau suffers from the same deficiency. Namely, Shiau is silent regarding changing the color tone of a desired area based on cumulative histograms of colors.

Therefore, Shiau cannot be relied upon to teach or suggest at least this feature of claim 1.

Also, Shiau cannot be relied upon to teach or suggest the feature of receiving specification of a first area nor the feature of receiving specification of a second area as recited in the claims. In the Office Action, the Examiner points to column 5, lines 10 and 11 to allegedly teach these features. *See Office Action, page 3, first paragraph.*

However, the relied upon portion of Shiau merely indicates that an object of Shiau's invention is to convert color data from a source color to a color data of a destination color. Clearly, this portion of Shiau cannot be relied upon to teach or suggest the features of first and second areas as claimed.

For at least the reasons stated above, independent claim 1 is distinguishable over Shiau. Therefore, Applicant respectfully requests that the rejection of claim based on Shiau be withdrawn.

§ 103 REJECTION – KAY, SHIAU

Claim 2 stands rejected under 35 USC 103(a) as allegedly being unpatentable over Kay (USP 6,377,269) and Shiau. Applicant respectfully traverses.

For a Section 103 rejection to be proper, a *prima facie* case of obviousness must be established. *See M.P.E.P. 2142.* One requirement to

establish *prima facie* case of obviousness is that the prior art references, when combined, must teach or suggest all claim limitations. See *M.P.E.P.* 2142; *M.P.E.P.* 706.02(j). Thus, if the cited references fail to teach or suggest one or more elements, then the rejection is improper and must be withdrawn.

As noted above, claim 2 recites, in part “changing a color tone of a desired area including the second area into the color tone of the first area based on cumulative histograms of colors of the first and second areas.” It has already been shown above that Shiau cannot be relied upon to teach or suggest at least this feature.

Kay is also similarly deficient. More specifically, Kay is directed toward automated generations of photo masks by electronically processing multiple images of a foreground subject taken on different backgrounds in order to generate a new image of the foreground subject completely removed from the background. See *column 1, lines 10-22*. Kay discloses method of generating composite image in which transparency values of pixels are calculated so that the foreground can be removed.

However, it is clear that Kay is entirely silent regarding changing color tone of desired areas based on cumulative histograms, much like Shiau. Since neither Kay nor Shiau can be relied upon to teach or suggest at least this feature, the combination of Kay and Shiau also cannot be relied upon to teach or suggest at least this feature.

Further, Kay also cannot be relied upon to teach or suggest the feature of specifying a first area and a second area as recited in the claims. In the Office Action, the Examiner alleges that column 10, lines 1-4 of Kay teaches these features. However, the relied upon portion merely indicates that software controls of this system allows a single image to be captured with the user's choice of background color or allow the automated capture of multiple, sequential images each with the correlated selected background color. Clearly, this portion of Kay cannot be relied upon to teach or suggest the first and second areas as claimed. Also, it has been shown above that Shiau cannot be relied upon to teach or suggest these features as well.

For at least the above stated reasons, claim 2 is distinguishable over the combination of Kay and Shiau. Therefore, Applicant respectfully requests that the rejection of claim 2 based on Kay and Shiau be withdrawn.

CONCLUSION

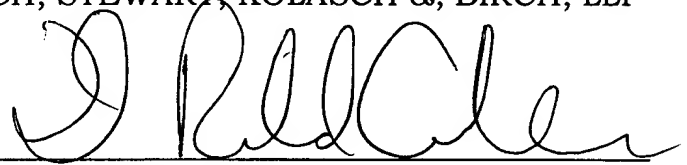
All objections and rejections raised in the Office Action having been addressed, it is respectfully submitted that the present application is in condition for allowance. Should there be any outstanding matters that need to be resolved, the Examiner is respectfully requested to contact Hyung Sohn (Reg. No. 44,346), to conduct an interview in an effort to expedite prosecution in connection with the present application.

If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies, to charge payment or credit any overpayment to Deposit Account No. 02-2448 for any additional fees required under 37 C.F.R. §§ 1.16 or 1.17; particularly, extension of time fees.

Respectfully submitted,

BIRCH, STEWART, KOLASCH &, BIRCH, LLP

By: _____



D. Richard Anderson
Reg. No. 40,439

HNS

DRA/HNS/jm

P.O. Box 747
Falls Church, VA 22040-0747
(703) 205-8000